in any court of competent jurisdiction, and if the owner failed to appeal to the court of summary jurisdiction he shall not be entitled in proceedings under that subsection, that is, before any court of competent jurisdiction, to dispute the validity of the action taken by the local authority upon any ground which could have been raised by such an appeal. There is the very precise exclusion of the subjects' ordinary rights, but it is limited to that one case where the local authority are suing to recover the cost of steps taken pursuant to that form of enforcement notice.

When one comes to section 24(3) there is no such provision, and in my judgment there is no reason why one should read into that section what is contended for by the defendants, namely, that if the owner does not exercise a right of appeal under section 23(4) within the 28 days he is thereby precluded from raising in any court the points against the enforcement notice."

The prohibition against disputing the validity of the action taken under section 24(1) and the lack of any such prohibition in connection with section 24(3) was read as indicating that other action was intended to be available in a case coming within section 24(3). There is no such indication in the 1956 Ordinance. By section 11 it is clear that the Legislature intended that there should be no appeal from any decision of the Board on a question of fact, but that there should be an appeal on a point of law and that that appeal should go to the High Court.

In *Badat bin Drani* v. *Tan Kheat, supra,* Briggs J. held that the making of an order of *certiorari* was discretionary and refused to make an order in that case because, *inter alia,* the applicant had failed to avail himself of the normal remedy of appealing in the High Court.

In the present case the plaintiffs were not without a remedy. They were specifically given a right of appeal on a point of law by section 11 of the 1956 Ordinance. They have suffered no injustice because they have only themselves to blame for not pursuing the appeal. In my opinion section 11 of the 1956 Ordinance provides for an aggrieved party an entirely adequate alternative remedy and accordingly this is not a case in which a claim to a declaration should be entertained.

The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Braddell & Ramani; Lim, Lim & Oon.*

TAN HONG CHIT v. LIM KIM WAN

[O.C.J. (Hashim J.) January 19, 1963]

[Kota Bharu — Originating Motion No. 3 of 1962]

Land Laws — Malay reservation land held by non-Malay — Transfer to another non-Malay — Whether approval of Ruler-in-Council required — Malay Reservation Enactment, 1930, ss.3(i) and 13A(iii).

Under section 13A(iii) of the Malay Reservation Enactment, 1930, when a piece of land in the Malay Reservation area is registered in the name of a non-Malay who had acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. But once a non-Malay registered owner transfers or charges the land to a "Malay" as defined in section 3(i) of the Enactment then the new Malay registered owner cannot transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council.

ORIGINATING MOTION.

Hwang Yang Choo (*Wan Mustapha bin Haji Ali* with him) for the applicant.

Isahak bin Abdul Hamid for the respondent.

Hashim J.: This is an application by way of motion that "Presentation No. 891 of 1950 Transfer Jual Janji No. 15 of 1950, and Presentation No. 2905 of 1950 Transfer Jual Janji No. 84 of 1950 be set aside as they are *ultra vires,* the Malay Reservation Enactment, 1930", that is to say, the transfers were registered without obtaining the approval of the Ruler-in-Council.

It is not disputed that the contracting parties to the two Jual Janji transfers are non-Malays. Evidence has been adduced to show that the administrative district of Kota Bharu was declared a Malay Reservation area by Notification No. 56 of 1930 dated 9th December, 1930. It is not disputed that Lots 26, 27 and 29, section 2, Kota Bharu Town are in the administrative area of Kota Bharu. It is also not disputed that these three lots were registered in the names of non-Malays before 9th December, 1930 and were still registered in the names of non-Malays on 9th December, 1930.

Mr. Hwang for the applicant argued that the provisions of section 13A of the Malay Reservation Enactment, 1930, meant that when land was registered in the name of a non-Malay at the time the land was included in a Malay Reservation area, the registered owner, the non-Malay could transfer or charge the land to another non-Malay without obtaining the approval of the Ruler-in-Council but any subsequent transfer or charge of the land to a non-Malay had to get the approval of the Ruler-in-Council.

In my opinion, the provisions of section 13A(iii) of the Malay Reservation Enactment, 1930, are relevant to this Motion. It reads:

"Nothing in this section shall prevent the transfer or transmission of the right or interest in reservation land of any person not being a Malay to any other person not being a Malay always provided that such right or interest shall have been acquired prior to the creation of the Malay Reservation in which the land is included. (*Amended by Enactment No. 3 of 1949*)."

I would interpret this section as follows. When a land in the Malay reservation area is registered in the name of a non-Malay who has acquired the land prior to the creation of the Malay Reservation the non-Malay can transfer or charge the land to any non-Malay and any subsequent transfer or charge to a non-Malay can be effected without obtaining the approval of the Ruler-in-Council. *But* once a non-Malay registered owner transfers or charges the land to a Malay as defined in section 3(i) of the Enactment then the new Malay registered owner cannot

transfer or charge the land to a non-Malay without obtaining the approval of the Ruler-in-Council. In my opinion the purpose of the Malay Reservation Enactment is to protect the right and interest of a Malay in reservation land but when the registered owner is a non-Malay he can transfer or deal with his land with any other non-Malay without obtaining the approval of the Ruler-in-Council so long as his land is not transferred or charged to a Malay. Once the land is transferred or charged to a Malay then the restrictions imposed by the Enactment come into force.

For these reasons I hold that Jual Janji transfers are valid and I dismiss the application with costs.

Application dismissed.

Solicitors: *Wan Mustapha bin Haji Ali*; *Isahak bin Abdul Hamid & Co.*

KOW GUAN v. ARUNACHALAM CHETTIAR

[A.C.J. (Ismail Khan J.) October 20, 1962]

[Seremban — Civil Appeal No. 9 of 1960]

Landlord and Tenant — Standard rent — Increase of, above — Increase made without observing provisions of Control of Rent Ordinance, 1948, s.6(2) — Effect of such increase.

The question for determination was whether an increase of rent from $40 (standard rent) to $50 of controlled premises without determining the tenancy according to law as required by section 6(2) of the Control of Rent Ordinance, 1948 (now section 6(2), Control of Rent Ordinance, 1956) was valid.

Held: the onus was on the landlord to show that the existing tenancy was determined according to law prior to the increase of rent and he had failed to discharge that burden in this case. The increase was therefore an improper increase and the excess must be refunded.

Cases referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

(2) *Robins* v. *National Trust Company* [1927] A.C. 515 at page 520.

CIVIL APPEAL.

Khoo Eng Chin for the appellant.

F. Keith Sellar for the respondent.

Ismail Khan J.: The appellant was the tenant of the rent controlled premises, No. 21 Lister Road, Kuala Pilah, of which the respondent is the landlord, and this is an appeal against an order for possession made in favour of the respondent by the President of the Sessions Court, Kuala Pilah. The respondent has also cross-appealed against the order made on the counterclaim.

Neither the ownership nor the tenancy of the premises has changed hands in recent years. The respondent is the registered proprietor and landlord since 14th February, 1951. The previous owners were the RM.P. firm of which the respondent was a partner. The appellant himself succeeded his father as contractual monthly tenant upon the latter's death in 1932. After being in arrears of rent from time to time the appellant was owing rents from February, 1959 to September, 1959, when a notice dated 10th November, 1959, was served on him by the solicitors for the respondent determining the tenancy on 31st December, 1959. Rent for these eight months was subsequently accepted by the respondent but rent tendered thereafter was refused. The appellant however declined to vacate the premises and in consequence the respondent commenced proceedings for ejectment in the Sessions Court at Kuala Pilah. In the statement of claim the rent of the premises was said to be $50 per month payable in arrear and possession was claimed on the ground that rent having been in arrear for eight months the tenancy had been duly determined by notice to quit.

The defence briefly was that the standard rent of $40 per month remained the maximum recoverable rent at all times by reason of the failure of the respondent's predecessors in title to observe the provisions of section 6(2) of the Control of Rent Ordinance, 1948, then in force (now contained in section 6(2) of the present Ordinance, 1956). The appellant contended that he was thus entitled to be credited with the accumulated excess payments made by him from March, 1948 to September, 1959, amounting to $1,390 so that no rent lawfully due was in arrear at the date of the service of the notice determining his tenancy. He further counterclaimed against the respondent for payment of the sum of $1,390.

The issue before the President therefore was whether the maximum recoverable rent was $40 or $50. The determination of this question turned on section 6(2) of the 1948 Ordinance which was in force when the rent was increased from $40 to $50 in March, 1948. After stating in sub-section (1) what were the permissible increases of rent, section 6, sub-section (2) went on to provide that "nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law prior to increasing the rent."

The receipt issued by the RM.P. firm who were the landlord prior to 1951 showed that the rent paid in October, 1940 was $40 per month, thereby establishing the amount of standard rent. The same rent continued to be paid up to February, 1948. In March the rent was increased by 25% to $50. The pleadings having clearly raised the issue whether or not a notice was given to determine the tenancy prior to increasing the rent, I would observe that no evidence on this point was given by either of the two witnesses called by the respondent. On the other hand, the appellant was able to state categorically of his own personal knowledge as tenant as follows: "Rent for premises in February, 1948 was $40 and rent for March, 1948 was $50. No one gave me any notice to increase the rent of $40 to $50. The rent collector came and asked me to pay an increase of $10 in the rent